

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	WC Docket No. 12-375
Rates for Interstate Inmate Calling Services)	

COMMENTS OF THE FLORIDA SHERIFFS ASSOCIATION

The Florida Sheriffs Association (FSA) hereby submits comments on the *Second Further Notice of Proposed Rulemaking (SFNPRM)*,¹ in which the Commission seeks comment on a number of issues in connection with the regulation of Inmate Calling Services (ICS). In this comment, FSA provides numerous examples of why Sheriffs must be allowed to recover their costs in order to encourage the continuation of ICS. FSA recognizes that jails differ from prisons and also supports a tiered rate structure for ICS rates to ensure that the rates for ICS providers that serve jails are sufficient to allow ICS providers to recover their costs. Finally, FSA supports a two year transition for the implementation of the rules.

The Florida Sheriffs Association is made up of the 67 Sheriffs of Florida who are the chief law enforcement officials in counties which range greatly in geographic size and population.² As each Florida County is unique, each of the 67 county jails are also diverse. For example, the average daily population in county jails across the state can range from less than 20 inmates a day to over 4,000.³ The successful management of county jails requires the use of different strategies from agency policies to budgetary considerations. Such is reflected in the costs required to provide Inmate Calling Services (ICS) in each jail

¹ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Further Notice of Proposed Rulemaking, FCC 14-158 (rel. October 22, 2014) (*Second Further Notice of Proposed Rulemaking or SFNPRM*).

² The duties of Florida Sheriffs also differ in relation to the management of each county jail. In eight counties, the Sheriff is not in charge of the county jail. (Escambia, Okaloosa, Jackson, Citrus, Volusia, Orange, Osceola, Miami-Dade).

³ "Florida County Detention Facilities' Average Daily Population." September 2014. Florida Department of Corrections. <http://www.dc.state.fl.us/pub/jails/2014/09/FCDF.PDF> (Last visited December 26, 2014).

and the administrative and security costs which ensure that the ICS is managed in a way to protect public safety. In our comments below, we provide examples that demonstrate a need for separate rate caps for jails and prisons, a tiered system for per minute rate caps in jails, and the recovery of costs related to the maintenance and security of the ICS.

In Consideration of Per Minute Rate Caps, Tiered Rates, and Jail vs. Prison Caps

The Commission has asked for comment on the adoption of a single per minute rate cap,⁴ tiered rates,⁵ and on the differences between jails and prisons.⁶ As stated above, Florida county jails' average daily populations range greatly across the state. In the upper end of that range, the Miami-Dade Corrections and Rehabilitation Department operates six detention facilities— the eighth largest jail system in the United States. On the lower end of the average daily population is Calhoun County, averaging four inmates per day.⁷ Calhoun County is not without company as nearly 70,000 inmates, or 10% of the total United States jail inmate population, are confined in local jails with inmate populations of less than 100.⁸ On size alone, the notion of a one-size-fits all approach to per minute cap rate is not feasible for these small counties. Even if inmates in these counties significantly up their phone usage, it is impossible that with a standardized per minute rate cap ICS providers would be able to recover costs for providing the service. Based on this comparison of small-to-large counties, it should be further clear that including prisons in a single-per-minute rate cap model would further skew any cost recovery chances that ICS providers would have in a smaller county.

For these reasons, FSA supports per-minute rate caps for jails that are separate from prison rates and tiered to ensure that jails of different sizes are able to recover costs required by the ICS. A

⁴ *SFNPRM* at ¶61.

⁵ *SFNPRM* at ¶67.

⁶ *Id.*

⁷ *See Note 3.*

⁸ “Annual Survey of Jails, 2012-2013.” Bureau of Justice Statistics. May 2014, revised August 2014. <http://www.bjs.gov/content/pub/pdf/jim13st.pdf> (Last visited December 26, 2014).

tiered system based on inmate population can provide jails with vastly different populations an easier way to recover costs.

In Consideration of Recovery for Security and Administrative Costs

While full cost recovery of all ICS expenses is essential to jails providing ICS for inmates and their families, even the use of a tiered-per-minute rate cap system is unlikely to meet this goal without allowing for further cost recovery of expenses related to security and administrative costs of the ICS. The Commission has foreseen this issue and has asked for comment on it.⁹ Jails across Florida and across the country vary in the level of involvement in administration and security of ICS. In some counties, the ICS provider is responsible for the completion of routine tasks, such as inmate account creation, and even more serious duties of monitoring phone conversations. However, other counties may take on these responsibilities in-house with jail employees. This discretion in services creates greater disparities among counties with similar average daily populations and further complicates the issue of ICS cost recovery through per minute rate caps. Jails that decide to take on more responsibilities, especially those that ensure public safety, will need to be compensated as those costs directly relate to ICS.

It is paramount that security be included as a cost that is essential to maintaining ICS in jails. When FSA requested comments from Florida jails, we were inundated with examples on the important function of ICS security. Even when prompted with a disclaimer that all phone calls are recorded, inmates talk openly with detailed information related to past, present, or future criminal activity. In some Sheriffs' Offices, units such as Court Services, Vice and Narcotics, Property Crimes and Major Crimes, have also been given access to the ICS system for investigative purposes. Also, in some jurisdictions State Attorneys' Offices use the ICS to monitor and review calls, and have reported successful case outcomes due to the information received.

⁹ *SFNPRM* at ¶40.

Additional crimes are committed through the use of the ICS, and it remains the objective of jail detectives to reduce continued or new victimization. Because of evidence gathered through the security and monitoring of the ICS, inmates have been charged with homicide, armed robbery, burglary, and are most commonly charged with violation of protective injunctions or no-contact orders. While inmates may not always provide complete confessions through ICS, evidence can typically be found to indicate accomplices, find additional witnesses, provide investigators with new leads, or even be used to establish probable cause. The ICS is a wealth of information and a gateway to the outside world for inmates. If left without proper or reduced security and monitoring, inmates may be able to continue to harm victims or create new ones. Below are just some of examples FSA received in which the ICS prevented or helped solve pending criminal cases:

- An inmate continued to harass the victim by having the person called by the inmate engage in a three-way-call with the victim.
- The suspect used the inmate phone system to hire an individual to kill his girlfriend and her brother. The conversations provided direct evidence to the crime.
- In a recent homicide case, a defendant was "acting insane" by not talking but only grunting. He was caught on a telephone call losing his temper and saying specific things that would indicate he was only acting. The defendant eventually started talking on the phone and provided detectives with even more information to help the case against him.
- A suspect had burglarized several houses, and a very sentimental piece of jewelry was taken from the victim's residence. After listening to many of the suspect's telephone calls, the investigator was able to locate the individual who had the jewelry. The jewelry was located and returned to the very grateful owner.

- A man and a woman were both charged with Attempt/Solicit/Conspire to Commit Murder.

There were recorded calls through the ICS in which both suspects could be heard discussing the plot and information in a coded letter. Both suspects entered pleas to the charges.

In Consideration of a Two-Year Transition Period

The Commission seeks comment on a recommended time allocated for transition to any newly adopted rules.¹⁰ As Florida Sheriffs' budgets are determined on a yearly basis, the Florida Sheriffs Association supports a two-year transition period before any new rules become effective. Any changes to site commission and rate caps may reduce revenue in Sheriffs' budgets otherwise necessary to maintain ICS functions. A two-year transition would allow Sheriffs to adjust their budgets to ensure that ICS can be properly maintained without any adverse consequences.

Conclusion

The Florida Sheriffs Association supports Sheriffs' needs in recovering costs related to the security and administration of the ICS. Security is a vital part of the operation of ICS and should be included as allowable recovered costs. The Florida Sheriffs Association also supports a tiered per-minute rate system for small, medium, and large jails that is a separate per minute rate from prisons. Finally, FSA supports a two-year transition following the Commission's adoption of any rules to allow Sheriffs to adjust their budgets.

Respectfully submitted,

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¹⁰ *FNPRM* at ¶130 and 131.

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Dated: January 5, 2015